

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION

STACEY R. SMITH,

Plaintiff,

Case No. 1:10-cv-702

v.

HON. JANET T. NEFF

ADVANCED RADIOLOGY et al.,

Defendants.

OPINION AND ORDER

This action was brought by Plaintiff Stacey R. Smith on July 22, 2010 against Advanced Radiology and Jeffery K. VanHattum, an attorney who filed a debt collection case against Plaintiff in the 61st District Court in Kent County, Michigan (Dkt 1). On August 2, 2010, the case was referred to the Magistrate Judge, who issued a Report and Recommendation (R & R) on August 20, 2010, recommending that the action be dismissed upon initial screening pursuant to 28 U.S.C. § 1915(e)(2) on grounds that the complaint failed to state a claim upon which relief may be granted (R & R, Dkt 6). The case is now before the Court on Plaintiff's Objection to the Report & Recommendation, received on September 1, 2010 (Pl. Obj., Dkt 8). In accordance with 28 U.S.C. § 636(b)(1) and FED. R. CIV. P. 72(b)(3), the Court has performed de novo consideration of those portions of the Report and Recommendation to which Plaintiff objects. The Court denies the objections and issues this Opinion and Order.

Plaintiff asserts one overall objection to the Magistrate's Report and Recommendation.¹ Plaintiff contends that the Magistrate Judge erred in finding that the Court does not have jurisdiction over Plaintiff's claim and overlooked the basis of Plaintiff's complaint. Specifically, Plaintiff asserts that he is not requesting that this Court "make a ruling on a decision that has been made by the 61st District Court," but is bringing an action under the Fair Debt Collection Practices Act (FDCPA), 15 U.S.C. § 1692 *et seq.*, arising out of the conduct of Defendant VanHattum and his office staff (Dkt 8 at 2; Pl. Compl.).

Plaintiff's complaint is difficult to understand and at times contradictory. For example, on page 3 of the complaint, Plaintiff indicates that he seeks damages pursuant to 15 U.S.C. § 1692(d)-(g) and (j) (Dkt 1 at 3). However, in his proposed order, he requests either (1) reversal of the 61st District Court's default judgment order, "reversal of all funds to the defendant" (i.e., Plaintiff), and dismissal of the case, or (2) enforcement of a settlement agreement that was set aside by the 61st District Court, i.e., an order by this Court to proceed with the "Stipulation and Order of Conditional Dismissal" entered in the state court case (Dkt 1, Att. 3).

Although Plaintiff contends that he is not seeking review of the state court's decision, his complaint and the circumstances presented focus directly on the underlying events and proceedings in his state court case, and he advises this Court that he is still litigating as the defendant in that case (Dkt 1, Compl. & Atts.; Dkt 8, Obj. at 4). The state case docket indicates that Plaintiff sought to file a motion in the state court case to change venue to this Court (Dkt 1, Att. 2 at 5).

¹Plaintiff, without leave of the Court, filed a supplement to his Objection on September 20, 2010 and an amended supplement (Dkt 10) to his Objection on September 29, 2010. These supplements were not timely filed pursuant to 28 U.S.C. § 636(b)(1). In any event, the Court has considered Plaintiff's amended supplement and concludes that it does not warrant a different disposition.

Under the circumstances presented, the Magistrate Judge properly found that this Court did not have jurisdiction to review the civil state court judgment (R & R at 2). The Report and Recommendation of the Magistrate Judge is accepted and adopted as the Opinion of this Court.

A Judgment will be entered consistent with this Opinion and Order. *See* FED. R. CIV. P. 58. For the above reasons and because this action was filed *in forma pauperis*, this Court also certifies pursuant to 28 U.S.C. § 1915(a)(3) that an appeal of this decision would not be taken in good faith. *See McGore v. Wrigglesworth*, 114 F.3d 601, 610-11 (6th Cir. 1997) (overruled on other grounds by *Jones v. Bock*, 549 U.S. 199, 206, 210-11 (2007)).

Accordingly:

IT IS HEREBY ORDERED that Plaintiff's Objection (Dkt 8) is DENIED, and the Report and Recommendation (Dkt 6) is APPROVED and ADOPTED as the Opinion of the Court.

IT IS FURTHER ORDERED that the Complaint (Dkt 1) is DISMISSED pursuant to 28 U.S.C. § 1915(e)(2)(B)(ii) for the reasons stated in the Report and Recommendation.

IT IS FURTHER ORDERED that the Court certifies pursuant to 28 U.S.C § 1915(a) that an appeal of the Judgment would not be taken in good faith.

DATED: February 1, 2011

/s/ Janet T. Neff
JANET T. NEFF
United States District Judge